

No. 17-1220

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NATIONAL LABOR RELATIONS BOARD

Petitioner/Appellants,

v.

ATLANTIC NORTHEAST TRANSPORT, INC.,

Respondent/Appellee.

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**RESPONDENT/APPELLEE'S MOTION TO RECALL CERTIFIED  
JUDGMENT AND, IN THE ALTERNATIVE, PETITION FOR  
REHEARING OR FOR REHEARING EN BANC**

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ATLANTIC NORTHEAST TRANSPORT, INC.

## **BASIS FOR APPEAL AND PROCEDURAL HISTORY**

On July 2, 2016, the NLRB's General Counsel ("GC") allegedly issued a Complaint and Notice of Hearing on Respondent/Appellee Atlantic Northeast Transport, Inc. ("ANT"), alleging violations of Sections 8(a)(1) and (3) of the National Labor Relations Act. ANT never received a copy of the Complaint and Notice of Hearing. On September 20, 2016, the GC allegedly filed, with the NLRB, a Motion for Default Judgment based upon ANT's failure to file an Answer to the Complaint. On September 21, 2016, the NLRB issued a Notice to Show Cause why the Motion for Default Judgment should not be granted. ANT neither received nor responded to the Motion or Notice to Show Cause. On November 30, 2016, the NLRB issued its Decision and Order in the case bearing docket number 22-CA-175081 ("Order") granting the GC's Motion for Default Judgment. The NLRB found that because ANT had not responded to either the Complaint or the subsequent Motions, the Motion for Default Judgment was appropriate. Notably, the Order entertains the notion that ANT failed to respond to the Complaint and Motion because it never received notice of either, but alternatively finds:

The Complaint was served on the Respondent by certified mail, return receipt requested. On August 31, 2016, the complaint was returned by the Postal Service as "unclaimed." It is well settled that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act.

The letter was sent by regular mail to the Respondent at its address in Kearny, New Jersey. The letter was not returned. The failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent.

Member Miscimarra concurs with the entry of a default judgment in this case. However, there may be some question regarding whether the Respondent's correct address (used for purposes of service) is "Kearny, New Jersey" or "South Kearny, New Jersey." In the instant case, it appears that both addresses result in delivery to the same physical location. Yet, because default judgment cases can give rise to questions regarding whether the proper address was used when serving the complaint or when serving a Notice to Show Cause why a default judgment, should not be granted, Member Miscimarra believes the Board should evaluate the development of standards that would foster greater uniformity and certainty regarding the address that will be used for purposes of service.

(internal citations omitted).

Based on the substance of the Order, it is appears that the GC served the Complaint, Motion and Notice to Show Cause on ANT's address, but used "Kearny, New Jersey." However, ANT's mailing address is 71 Central Avenue, South Kearny, New Jersey.

On January 24, 2017, the GC allegedly filed a Petition to Enforce the Order. The GC's Certification of Service certified that one copy each of the application for summary entry of judgment, appearance of counsel form, docketing statement, and proposed judgment was served by first class mail upon "Matthew Jenove, Atlantic Northeast Transport, Inc., 71 Central Ave., S. Kearny, NJ 07032-8870". While the address indicated appears correct, Matthew Jenove has not been

employed by ANT since June 2016 and ANT did not receive a copy of the Petition until in or about the week of February 24, 2017. Having now been served, counsel for ANT filed a notice of appearance and shortly thereafter, attempted to file an Answer to the Petition, but was informed that the Court had already entered Default Judgment and a Certified Judgment on March 8, 2017.

## **ARGUMENT**

### **1. THE PANEL SHOULD RECALL THE CERTIFIED JUDGMENT**

ANT respectfully moves the Court to recall the Certified Judgment in this case which was issued on March 8, 2017. The motion will be made on the ground that inadvertence, oversight, and accident occurred in the decision of this case by this Court, all of which caused this Court to reach an erroneous result, and that the granting of the motion and the reconsideration of the decision of this Court will be in the interests of justice.

Here, the Court has good cause to recall the Certified Judgment on the basis that Petitioner/Appellant National Labor Relations Board's ("NLRB") Petition for Enforcement was improperly served and further, the NLRB's Order of Default Judgment was based on improper service of process of the underlying Complaint and Motion for Default Judgment. Indeed, the NLRB has served ANT at the wrong address and addressed its filings to a former employee which lead to a delay

in receipt. As a result of these errors, ANT has been prejudiced and the March 22 judgment is void.

This application will not harm Appellant in any way, given the fact that the NLRB has not been (nor will be) legally prejudiced; ANT maintains meritorious defenses; and any delay, while highly regrettable, was hardly willful or culpable given the circumstances.

Based on the foregoing, Respondent/Appellee respectfully requests that the Court recall the Certified Judgment and allow ANT an opportunity to file an Answer to the Petition for Enforcement.

**2. IN THE ALTERNATIVE, THE PANEL SHOULD GRANT REHEARING BECAUSE IT OVERLOOKED THE ISSUE OF WHETHER THE NLRB IMPROPERLY RULED ON THE MOTION FOR DEFAULT.**

The gravamen of this appeal concerns the default judgment entered by the NLRB and the service concerns related thereto. ANT requests a ruling as to whether the NLRB should have entered default given the concerns related to service upon ANT. The Panel's March 8 ruling and Certified Judgment prevents an appropriate review of all issues and, in effect, deprives ANT of due process.

**I. CONCLUSION**

For the foregoing response, Respondent/Appellee Atlantic Northeast Transport, Inc. respectfully requests the Court grant its Motion to Recall the Certified Judgment, and, in the alternative, grant its Petition for Rehearing or

Rehearing *En Banc*.

Dated: April 18, 2017

Respectfully submitted,

/s/ David K. Broderick

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Attorneys for Respondent/Appellee  
Atlantic Northeast Transport, Inc.

**CERTIFICATE OF SERVICE**

I, David K. Broderick, hereby certify that on the 18th day of April, 2017, I caused the foregoing Memorandum of Law in Support of Respondent/Appellee Atlantic Northeast Transport, Inc.'s Motion To Recall Certified Judgment And, In The Alternative, Petition For Rehearing And For Rehearing *En Banc* to be filed electronically via ECF, which will send notice of such filing to the following:

Linda Dreeben, Esq.  
National Labor Relations Board  
1015 Half St. SE  
Washington, DC 20570

I further certify that on this 18th day of April, 2017, I caused the required number of copies of the Motion to Recall Certified Judgment And, in the Alternative, Petition for Rehearing And For Rehearing *En Banc* to be hand-filed with the Clerk of the Court.

/s/ David K. Broderick  
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*Counsel for Atlantic Northeast  
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## **ADDENDUM**

**PANEL OPINION (March 8, 2017)**

**CERTIFICATE OF PARTIES, RULINGS AND RELATED CASES, AND  
CORPORATE DISCLOSURE STATEMENT**



**CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES,  
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 28 and Cir. R. 26.1 and 28(a)(1), Atlantic Northeast Transport, Inc. makes the following disclosures and certifications:

**A. PARTIES AND AMICI**

The following parties were named before the National Labor Relations Board and are parties in this Court:

- Atlantic Northeast Transport, Inc., Respondent/Appellee
- National Labor Relations Board, Petitioner/Appellant

There are no intervenors or *amici*.

**B. RULINGS UNDER REVIEW**

The Motion concerns the Judgment Enforcing an Order of the National Labor Relations Board and Mandate, issued by the U.S. Court of Appeals for the Third Circuit on March 8, 2017.

**C. RELATED CASES**

The Charging Party in the underlying National Labor Relations Board matter, Noorudin Hanif, has also filed a case before the United States District Court for the District of New Jersey, bearing Docket No. 2:16-cv-01776 CCC-JBC.

**D. CORPORATE DISCLOSURE**

Atlantic Northeast Transport, Inc., an intermodal trucking company, hereby states that it is not a subsidiary of any Company and there is no parent company that owns 10% or more of Atlantic Northeast Transport, Inc.'s stock. There is no publicly held corporation that owns 10% or more of Atlantic Northeast Transport, Inc.'s stock.

Dated: April 18, 2017

/s/ David K. Broderick

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